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Supreme Court, U.S.

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APPENDIX

L. ROBERT SEAVEN, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-11

JAMES R. JAMES, Judicial Administrator, Et Al.,
Appellants,

vs.

DAVID E. STRANGE,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MATTHEW J. DOWD
Assistant Attorney General
State House
Topeka, Kansas 66612

Of Counsel

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Attorney General

EDWARD J. COLLISTER, JR.
Assistant Attorney General
Attorneys for Appellants

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FILED JULY 1, 1971

JURISDICTION NOTED DECEMBER 7, 1971

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DOCKET ENTRIES

1. Complaint—filed January 30, 1970
2. Stipulation of Facts—filed February 26, 1970
3. Answer—filed March 20, 1970
4. Opinion of the Court—filed March 5, 1971
5. Journal Entry of Judgment—filed April 19, 1971
6. Notice of the Appeal to the Supreme Court of the United States—filed May 3, 1971.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

DAVID E. STRANGE,

Plaintiff,

vs.

JAMES R. JAMES, Judicial Administra-
tor,

and

THE STATE OF KANSAS,

Defendants.

No. T-4713

COMPLAINT

(Filed January 30, 1970)

The plaintiff for his cause of action alleges and states
as follows:

Jurisdiction

1. The plaintiff invokes jurisdiction of a three-judge United States District Court under the provisions of 28 United States Code Annotated, Section 2281. He bases his reason for invoking the jurisdiction of this Court on the facts that will be more fully set out herein.

Parties

2. Plaintiff is a United States citizen who resides in Topeka, Shawnee County, Kansas.

3. Defendant, James R. James, is the duly appointed Judicial Administrator of Courts which position is provided for in the Kansas Judicial Department Reform Act of 1965. (K.S.A. 20-318.) Defendant James may be served with summons at his office on the third floor of the State House, Topeka, Shawnee County, Kansas.

4. The State of Kansas is named herein as a defendant because this action questions the constitutionality of the Aid to Indigent Defendants Act of the State of Kansas, K.S.A. 62-3101 et seq which became effective July 1, 1969. In such circumstances notice must be given to the Attorney General and Governor of this state under 28 United States Code Annotated Section 2284(2).

Statement of the Case

5. The plaintiff, David Strange, was arraigned on the charge of robbery first degree (K.S.A. 21-527, 530) in the Magistrate Court of Shawnee County, Kansas on July 2, 1969. The record shows that David Strange at that time was advised of his right to counsel and to trial and to a preliminary hearing. His bail was set at \$5000.00. He was placed in the Shawnee County jail, being unable to post a bond for bail. On July 3, 1969, a warrant was returned, filed and served upon David Strange. On July 10, 1969, Magistrate Judge Stephan J. Kritikos requested

that Attorney John Wilkinson represent David Strange on that same date the Court found David Strange indigent and appointed John E. Wilkinson to represent him in the felony charge. Attached hereto and made a part hereof by reference is the complete Shawnee County District Court file.

6. At no time was David Strange advised of the provisions of Section 13(a) and 13(b) of Chapter 291 of the Session Laws of the State of Kansas 1969 (K.S.A. 62-3113). These sections provide that any money expended by the State to appointed counsel which would be of aid to an indigent defendant, must be paid back by the indigent defendant within a particular time. Failure to so pay will result in a judgment against the indigent. This judgment is "like any other judgment." That is, there could be an execution, a garnishment, or any other proceeding in the aid of execution of the judgment.

7. On August 19, 1969, David Strange plead guilty to the felony of pocket picking as defined by K.S.A. 21-2422. David Strange's plea of guilty was accepted by the Court.

8. August 22, 1969, David Strange was sentenced for the felony offense of pocket picking to a term of imprisonment for a term of three years; the Court ruled that the execution of this sentence of imprisonment would be suspended and that David Strange be placed on probation for a period of three years.

9. David Strange was 18 years of age at the time he plead guilty and was sentenced. This was his first felony offense.

10. Subsequent to release on probation, David Strange has obtained employment. He has worked steadily at a very modest wage. In addition, he has gotten married.

11. On August 29, 1969, John E. Wilkinson filed his Voucher for services rendered to David E. Strange.

12. In December, 1969, the State expended from the Indigent Defendants Fund the sum of \$500.00 to David Strange's court appointed counsel, John E. Wilkinson. On December 9, 1969, James R. James, pursuant to the provisions of K.S.A. 62-3113, sent to David Strange by certified mail, notice requesting payment of the sum of \$500.00 which had been expended for David Strange's defense as an indigent. The notice provided that he had until February 4 1970 to pay \$500.00 to the Supreme Court.

13. The plaintiff David Strange verily believes Section 13(a) and 13(b) of the Statute (K.S.A. 62-3113) is unconstitutional and that it deprives him of his right to counsel as guaranteed to him by the Sixth Amendment of the United States Constitution, which is made mandatory upon the states by the Fourteenth Amendment to the United States Constitution.

14. The Sixth Amendment of the United States Constitution and decisions interpreting it, particularly *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799, 93 ALR 2d 733, guarantees counsel to indigent persons charged with felonies. The need for counsel in serious felony situations should not be infringed upon or even defeated by requiring that an indigent make a decision as to whether or not he wants to take the risk of being able to pay back the money being expended on his behalf.

WHEREFORE, plaintiff prays: (a) that this Court issue a temporary restraining order restraining and enjoining the defendants from proceeding under K.S.A. 62-3113 until a hearing on the preliminary injunction can be had; (b) that notices be sent in accordance with Section 2284, 28 United States Code, for the hearing on a preliminary injunction; that the Court enjoin these de-

pendants until there can be a final determination of the action; (c) that the Court cause a "Three-Judge U.S. District Court" to be convened and that that Court issue a permanent injunction restraining and enjoining the defendants and each of them from proceeding under K.S.A. 62-3113 in this case; and (d) that the duly convened three-judge court find that K.S.A. 62-3113 is unconstitutional in that it infringes upon the right in guarantee of counsel as provided by the Sixth Amendment of the United States Constitution and constitutes a denial of the process guaranteed under the Fifth Amendment of the United States Constitution, all of which is obligatory upon the State of Kansas by the Fourteenth Amendment of the United States Constitution.

/s/ John E. Wilkinson

John E. Wilkinson

708 First National Bank Building

Topeka, Kansas

CE 2-0564

JOHN E. WILKINSON, of lawful age and being first duly sworn states that he is the attorney for plaintiff in this cause; that he has personal knowledge of the facts alleged in the foregoing complaint and according to his best information and belief all of the allegations thereof are true.

/s/ John E. Wilkinson
John E. Wilkinson

Subscribed and sworn to before me this 30th day of
January, 1970.

/s/ Wilma Feerer
Wilma Feerer

(Seal) Notary Public

My Commission Expires: March 25, 1973.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

DAVID E. STRANGE,

Plaintiff,

v.

**JAMES R. JAMES, Judicial Administrator, and THE STATE OF KANSAS,
Defendants.**

No. T-4713

STIPULATION OF FACTS

(Filed February 26, 1970)

In accordance with an Order entered by Judge George Templar at the hearing on a temporary injunction direct-

ing the parties to stipulate as many facts as possible, the parties submit the following stipulations of fact:

1. On July 2, 1969, David Strange, age 18, was charged in Case No. 69-CR-592 by complaint with the offense of first degree robbery defined at K.S.A. 21-527 subjecting him to the penalties therefor provided in K.S.A. 21-530.

2. On that date, on the basis of the complaint, a warrant for David Strange's arrest was issued. The defendant was arrested pursuant thereto and was brought before the Magistrate Court of Shawnee County, Kansas, for arraignment.

3. The Magistrate Court Judge thereupon formally arraigned the accused David Strange: the Court advised the accused of his right to counsel, his right to preliminary hearing, and his right to trial by jury. The Judge set bail at \$5,000.00.

4. The accused advised the Court at that time that he was, through aid of sisters and brothers, contemplating arrangements for retention of counsel. The Court then continued the matter until July 10, 1969.

5. On July 10, 1969, the accused appeared before the Court without counsel. The accused indicated his need for counsel and his willingness to accept court-appointed counsel. The Court, upon interrogation, found the accused in need of counsel under the Sixth Amendment to the United States Constitution and further found the defendant without funds or any assets to employ counsel: the Court found the accused indigent.

6. On July 10, 1969, the Court appointed John E. Wilkinson to represent the accused in Case No. 69-CR-592 charging first degree robbery. On that same date at 4:30 p.m., the Court advised John E. Wilkinson that he had so been appointed counsel for David Strange.

7. On July 11, 1969, court-appointed counsel interviewed his client at the Shawnee County Jail.

8. On July 17, 1969, Case No. 69-CR-592 came before the Court. At that time, court-appointed counsel charged that the State of Kansas had lost jurisdiction to proceed against this accused because the accused had not been afforded any line-up meeting due process standards or otherwise and that failure to do so under the circumstances resulted in court-appointed counsel being unable to provide the accused with an adequate defense and a fair trial. Court-appointed counsel also asked the Magistrate Judge to find that bail in the amount of \$5,000 was excessive; that setting bail in that amount deprived the accused of any opportunity to get any creditable witnesses for his defense. Court-appointed counsel then called to the attention of the Court the Aid to Indigent Defendants Act effective July 1, 1969, and asked the Court to grant authority for court-appointed counsel to consult with out of town relatives and other people by telephone and to incur expenses which in court-appointed counsel's mind would aid counsel in fully and fairly representing the accused. The Magistrate Court Judge ruled that expenditures made for long distance telephone calls not related to the defense of the specific charge could not be paid for out of the Aid to Indigent Defendants' Fund.

9. On July 24, 1969, the matter came up for hearing again on the motion of court-appointed counsel. The Court found that it had no authority or jurisdiction to compel law enforcement agencies to conduct a line-up. It further found that the failure to conduct a line-up did not constitute a violation of due process. The Court further found that bail should be reduced to an amount of \$2,000 and held in abeyance any authorization for telephone communications out of state on the theory that the accused had not demonstrated the necessity and materiality.

10. Between July 24 and August 21, 1969, court-appointed counsel and the sister of defendant, Ualetta Singh, of St. Louis, Missouri, made every effort to try to work out something which would be in the best interest of the accused. Arrangements were made for enlistment into the armed forces. Then, at the last minute the Saline County Draft Board did in fact cause the defendant to be called for his pre-induction physical. In view of the fact that the accused was facing a first felony situation and in view of the fact that the Shawnee County District Court Judge was willing to grant an unconditional probation, court-appointed counsel and the accused appeared before the Magistrate Court Judge on August 19, 1969, at which time the complaint against the accused charging first degree robbery was amended to the charge of pocket picking as defined and set forth in K.S.A. 21-2422. At that time the defendant was bound over for trial to the District Court on the amended charge and bond fixed in the amount of \$2,000.

11. On August 19, 1969, court-appointed counsel and the accused appeared before the Shawnee County District Court Judge William Randolph Carpenter. On that date a review of the proceedings held in the Magistrate Court was made. In addition the Shawnee County District Court Judge, after having interrogated the defendant under oath, found that "the defendant was indigent and was financially unable to employ counsel and pay other costs of his defense." The Court thereupon formally appointed John E. Wilkinson as David Strange's court-appointed counsel. At that time the matter was given No. 27038 in the Shawnee County District Court which charged a violation of K.S.A. 21-2422; that is, that the accused did *unlawfully, feloniously and willfully* take from the person of another certain personal property.

12. Also on August 19, 1969, the defendant entered his voluntary plea of guilty to the charge defined in K.S.A. 21-2422, and this plea of guilty was accepted by the Court.

13. On August 22, 1969, the matter came before the Court for sentencing. The defendant, through his court-appointed counsel, made application for probation. The Court, taking into consideration the attending circumstances, suspended imposition of sentence and placed the defendant on probation for a period of three years "without the usual conditions and without supervision for good cause shown."

14. The defendant passed his induction physical for the armed forces and awaited his call to be drafted.

15. David Strange commenced work while awaiting call for the draft and has been working steadily at a modest wage ever since being granted probation. He has also married. His wife is pregnant. A judgment rendered against the plaintiff could result in great hardship to the plaintiff, if the judgment was enforced.

16. Subsequent to being sentenced, the court-appointed counsel for the accused David Strange asked for the forms to submit for services rendered as court-appointed counsel. Court-appointed counsel received State of Kansas Department of Administration Accounts and Report Division Form DA-120/2 and while completing that form discovered the provisions of K.S.A. 62-3113, Sections (a) and (b) of the Indigent Defendants Act.

17. On August 29, 1969, court-appointed counsel wrote a letter to Judge Carpenter advising Judge Carpenter that he felt that K.S.A. 62-3113 was unconstitutional. Court-appointed counsel also advised Judge Carpenter that he had not advised the defendant that the state would be making an effort to recover any sum of money paid by the

state to his court-appointed counsel. The Courts—Magistrate Court and Shawnee County District Court—never advised nor did his counsel advise the defendant that the defendant may have a judgment rendered against him if he did not pay back to the state the money which would be paid by the state to his court-appointed counsel.

18. In December 1969 the state expended from the Indigent Defendants' Fund the sum of \$500.00 to David Strange's court-appointed counsel, John E. Wilkinson.

19. On December 9, 1969, James R. James, pursuant to the provisions of K.S.A. 62-3113, sent to David Strange, by certified mail, notice requesting payment of the sum of \$500.00 which had been expended for David Strange's expense as an indigent. The notice provided that he had until February 4, 1970, to pay \$500.00 to the Supreme Court.

20. On January 30, 1970, complaint was filed in the United States District Court for the District of Kansas invoking the jurisdiction of a three-judge United States District Court under the provisions of 28 United States Code Annotated, Section 2281.

21. On February 2, 1970, a motion for temporary restraining order was entered ex parte by U. S. District Judge George Templar enjoining the Judicial Administrator from proceeding under the provisions of K.S.A. 62-3113.

22. Because of the lottery system recently enacted by the Congress of the United States, it appears now that the defendant will not be drafted into the armed forces. Consequently on December 22, 1969, the usual conditions of probation were imposed upon the defendant at that hearing. The assigned counsel asked the District Judge to enter an order not requiring the defendant to pay back the \$500.00 expended to court-appointed counsel in David

Strange's defense. It was pointed out by court-appointed counsel that the defendant had committed his first felony offense, that he has a job working at night, that he has a wife, that his wife is expecting a child, and that to have a judgment in the amount of \$500.00 entered against him at this time would be burdensome, annoying, harassing, and would result in his losing his job and result in his inability to care for himself and his wife.

23. The Shawnee County District Court Judge found that the motion to enjoin the Judicial Administrator from proceeding to judgment was not relevant to the proceedings at hand and that it would be inappropriate procedure for him to sustain such a motion at this point and time.

/s/ John E. Wilkinson
 John E. Wilkinson
 Attorney for David
 Strange, Plaintiff

/s/ Edward G. Collister Jr.
 Edward G. Collister
 For and on Behalf of
 the Attorney General
 for the State of
 Kansas and James
 R. James, Judicial
 Administrator, Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

DAVID E. STRANGE,

Plaintiff

vs.

JAMES R. JAMES, Judicial Administra-
tor, and THE STATE OF KANSAS,
Defendants

Civil No.
T-4713

ANSWER

(Filed March 20, 1970)

COME NOW the defendants and admit the allegations of the petition except as hereinafter specifically denied.

I.

Defendants deny that subsections (a) and (b) of K.S.A. 1969 Supp. 62-3113 are unconstitutional for reasons that they deprive plaintiff of his right to counsel as guaranteed to him by the sixth amendment to the United States Constitution or that K.S.A. 1969 Supp. 62-3113 is unconstitutional for any other reason.

WHEREFORE, defendants respectfully submit that the complaint is without merit and that all relief requested should be denied and the temporary restraining order which was granted should be dissolved.

Respectfully submitted,

Kent Frizzell

Attorney General

By /s/ Ernest C. Ballweg

Ernest C. Ballweg

Assistant Attorney General

Attorneys for Defendants.

CERTIFICATE OF PERSONAL SERVICE

I hereby certify that I personally delivered a true and correct copy of the foregoing Answer to JOHN E. WILKINSON, attorney for plaintiff, at the United States Courthouse, Federal Building, Topeka, Kansas, on the 20th day of March, 1970.

OPINION OF THE COURT

The opinion of the three-judge court is printed in the Jurisdictional Statement, pp. A1-A9.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

DAVID E. STRANGE,

Plaintiff,

vs.

JAMES R. JAMES, Judicial Administrator, and THE STATE OF KANSAS,
Defendants.

Civil No.
T-4713

JOURNAL ENTRY OF JUDGMENT

(Filed April 19, 1971)

On this 19th day of April, 1971, the above-captioned matter comes before a Three-Judge District Court of Circuit Judge Delmas C. Hill, District Judge George Templar, and District Judge Frank G. Theis. Plaintiff appears by his attorney, John E. Wilkinson, 708 First National Bank Building, Topeka, Kansas, and defendants appear by their attorney, Ernest C. Ballweg, Assistant Attorney General, Topeka, Kansas.

The Court finds that a Three-Judge District Court convened under the provisions of 28 United States Code § 2281,

et seq., has been duly impaneled to consider the constitutionality of K.S.A. 1970 Supp. 22-4513 (formerly codified as K.S.A. 62-3113, 1969 Supp.) and to enjoin its enforcement. The Court finds that Section 22-4513, unconstitutionally chills an indigent's exercise of his right to counsel guaranteed by the Sixth Amendment to the United States Constitution.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that K.S.A. 1970 Supp. 22-4513 is unconstitutional and that its enforcement should be permanently enjoined. Plaintiff is granted his cost including statutory attorney fees.

/s/ Delmas C. Hill
Delmas C. Hill
Circuit Judge

/s/ George Templar
George Templar
District Judge

/s/ Frank G. Theis
Frank G. Theis
District Judge

Approved:

/s/ John R. Martin
John R. Martin

Assistant Attorney General, representing James R. James for Vern Miller, Attorney General for the State of Kansas, and the State of Kansas.

/s/ John E. Wilkinson
John E. Wilkinson, of
Colmery, McClure, Funk & Hannah
708 First National Bank Building
Topeka, Kansas (66603) 232-0564
Attorney for Plaintiff.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

DAVID E. STRANGE,

Plaintiff,

vs.

JAMES R. JAMES, Judicial Administra-
tor, and THE STATE OF KANSAS,
Defendants.

Civil No.
T-4713

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

(Filed May 3, 1971)

I. Notice is hereby given that James R. James and the State of Kansas, defendants above-named, hereby appeal to the Supreme Court of the United States from the order declaring K.S.A. 1970 Supp. 22-4513 unconstitutional and enjoining its enforcement, entered March 5, 1971. This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all pleadings filed in this action.

III. The following question is presented by this appeal:

Whether the existence of a state statutory procedure providing for the collection from an indigent defendant of moneys expended by the State to furnish him counsel con-

stitutes an unlawful burden upon an indigent defendant's Sixth Amendment right to the assistance of counsel.

/s/ John R. Martin

John R. Martin

Assistant Attorney General

Attorney for the State of

Kansas and James R.

James, Judicial Admin-
istrator

Kansas Statehouse

Topeka, Kansas 66612

PROOF OF SERVICE

I, John R. Martin, one of the attorneys for the State of Kansas and James R. James, appellants herein, upon my oath, being of lawful age and duly sworn, do state that on the 5th day of April, 1971, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

1. On David E. Strange, by mailing a copy thereof to John E. Wilkinson, Esq., at his office in the First National Bank Building, 6th and Kansas Avenue, Topeka, Kansas, in a duly addressed envelope, first class, postage prepaid.

Signed /s/ John R. Martin

John R. Martin

Assistant Attorney General

Attorney for the State of

Kansas and James R.

James, Judicial Admin-
istrator

Kansas Statehouse

Topeka, Kansas 66612

STATE OF KANSAS)

) ss:

COUNTY OF SHAWNEE)

Subscribed and sworn to before me, a Notary Public
in and for said county and state, this 5th day of April, 1971.

/s/ Helen Maichel

(Seal)

Notary Public

My Commission Expires: July 11, 1971.

Supreme Court of the United States

No. 71-11 -----, October Term, 19

James R. James, Judicial Administrator,
et al.,

Appellants,

v.

David E. Strange

APPEAL from the United States District Court
for the District of Kansas.

The statement of jurisdiction in this case
having been submitted and considered by the Court,
probable jurisdiction is noted.